IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 3101 of 2000

Hon'ble MR.JUSTICE Y.B.BHATT

and

Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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NEW INDIA ASSURANCE CO. LTD.

Versus

MEERA WD/O RADHAKISHAN NAWANI

Appearance:

MR PV NANAVATI for Appellant
MR NALIN K THAKKER for Respondent

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CORAM : MR.JUSTICE Y.B.BHATT
and
MR.JUSTICE M.C.PATEL

Date of decision: 28/06/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE Y.B.BHATT)

1. On a joint request of the learned counsel for the respective parties, this appeal is taken up for final hearing today.

2. This is an appeal under section 173 of the Motor Vehicles Act, 1988 at the instance of the Insurance Company, challenging the judgement and award of the Motor Accident Claims Tribunal, Kutch at Gandhidham given under section 163-A of the Motor Vehicles Act (as amended in 1994). The appellant insurer contends that the impugned award under section 163-A has been delivered by the Tribunal as an interim award by passing the same as an order below Exh.18 in the main claim petition which has been filed under section 166 of the Motor Vehicles Act, which is yet pending. The main Claim Petition is numbered as MACP No.741/98, (New Number 1276/99) whereas the impugned judgement and award under section 163-A is passed below Exh.18.

3. The contention raised in this regard is that an award under section 163-A cannot be regarded to be an interim award nor can it be regarded to be subject to adjustment against an award that may be passed in a petition filed under section 166 of the Act.

4. This is a contention which we are bound to accept in view of the decision of the Supreme Court in the case of The Oriental Insurance Co. Ltd. Vs. Hansrajbhai Kodala reported in 2001(4) JT page 477.

5. In the premises aforesaid, in view of the clear position of the law laid down by the Supreme Court, the impugned judgement and award is required to be quashed and set aside. We hold and direct accordingly. This appeal is, therefore, allowed with no order as to costs.

6 . It is clarified that the respondents-claimants are at liberty to pursue the main claim petition filed under section 166 of the Act and to obtain a judgement thereon on merits and in accordance with law under section 168 of the Act.

7. The record and proceedings shall be sent back to the Tribunal at Gandhidham by the Registry forthwith i.e. not later than 5th July 2001.

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